

CONFIDENTIALITY AND NON-COMPETE AGREEMENT

This Agreement is entered into on this ____ day of _____ at _____ between:
_____, a Company incorporated under the Companies Act, 1956/2013 with its
office at _____ through its Managing Director _____
(hereinafter referred to as the EMPLOYER)

AND

_____ (hereinafter referred to as the EMPLOYEE)

The aforesaid Parties to this Agreement shall jointly be referred to as the 'PARTIES'.

WHEREAS the employee has accepted employment with the employer vide Acceptance Letter dated _____;

AND WHEREAS as part of the employment negotiations it was specifically agreed between the Parties that it was an essential and integral term that a separate confidentiality and non-compete agreement would be executed between the Parties;

NOW THEREFORE this Agreement is executed by the Parties hereto mentioned above of their own free will and volition and without any undue influence, coercion or the like in the following terms:

Section - 1

Definitions

For the purpose of this Agreement, the following expressions shall have the meaning specified hereunder:

'Agreement' shall mean this Non Compete and Confidentiality Agreement or any modifications or amendment thereto;

'Affiliate' shall mean, when referring to the Employee and Employer, any individual, partnership, joint venture, company or any legal entity or person which:

- (i) is directly or indirectly under the control of either Party, or;
- (ii) is directly or indirectly under common control with either Party, or
- (iii) Ultimately controls either Party.

For the purpose of this Agreement, "control" with respect to a company means (i) ownership of 50% or more of the voting rights of the company or (ii) the power to direct the management of the company, or to appoint a majority of the directors of the company, whether such power results from ownership of shares, or from a contract or otherwise.

“Employer” shall mean _____, a Company incorporated under the Companies Act, 1956 / 2013 with its office at _____ including its successors and assigns.

“Employee” shall mean and refer to

“Employer’s business” shall mean and include amongst other things, the business of _____

“Relative (s)” shall have the meaning as set out under the Companies Act, 1956/2013.

SECTION - 2

NON COMPETITION

2.1 The Employee undertakes to the Employer that he/she shall not and shall ensure that none of his/her Affiliates shall, either on his/her own account or in association with others engage or participate directly or indirectly, whether as shareholder, director, partner, proprietor, member, agent, distributor, employee or otherwise, within India or outside India, during the period of his/his employment in whatever capacity with the Employer and for a further period of 1 (One) Year from the date of ceasing to be in such employment, for whatever reasons:

- (a) In any business which, involves, relates to or competes with the Employer’s Business;
- (b) Establish, develop, carry on or assist in carrying on or be engaged, concerned, interested or employed in any business enterprise or venture competing with the Employer’s Business;
- (c) solicit, canvas or entice away (or Endeavour to solicit, canvass or entice away) from the Employer’s Business, or from any Affiliate of the Employer, any person, firm or company who was at any time during the period of one year immediately preceding the date of cessation of employment, a client of the Employer’s Business, for the purpose of offering to such client or customer, goods or services similar to or competing with those of the Employer’s Business;
- (d) solicit, canvass or entice away (or endeavour to solicit, canvass or entice away) any of the employees including the senior employees and/or technical or sales and marketing staff from the Employer or from any of its Affiliates, for the purpose of employment in an enterprise or venture competing with the Employer’s Business, whether or not such person would commit a breach of contract by reason of leaving service with the Employer;
- (e) solicit, canvass, or entice away (or endeavor to solicit canvass or entice away) any supplier of the Employer or of any of its Affiliates or use its knowledge of or influence over any such supplier to or for its benefit or for the benefit of any other person carrying on business competing with the Employer’s business or with any business of the Employer’s Affiliates;

- (f) act as an advisor, consultant, trustee or agent for any third person who is engaged or proposes to start any business which directly or indirectly relates to the Employer's business or promote, start, engage in or do any business that directly or indirectly relates to the Employer's Business;
 - (g) Establish after the execution hereof at any future point of time any business or trade under a name that is identical or similar to ' _____ ', or which in any way suggests any connection with ' _____ ' without written consent of the Employer. For the purposes of clarification, it is agreed by the Parties that the obligation, not to use a name which is identical or similar to " _____ " shall not be limited to the term/ period referred to in Section 2.1 above, in which case this restraint will have effect for an indefinite period.
- 2.2. Each of the above covenants shall be construed as a separate covenant and if one or more of the covenants is held to be unlawful, the remaining covenants shall continue to bind the Employee and their Affiliates.
- 2.3 It is expressly agreed by the Parties hereto that the Employer's obligations under this Agreement shall include that the Employee shall not directly or indirectly in any manner whatsoever undertake any competing Business through his Relatives. However this clause shall not be read and understood to constitute a bar on a relative of the Employee acting purely in the capacity of an employee for a competing business. The Employee shall promptly inform the Employer as and when he has knowledge of the fact that any of his Relatives are undertaking or propose to undertake any competing Business.
- 2.4 For the purpose of this Section, the expression "competing with the Employer's Business" or "Competing Business" shall be deemed to include the following.
- (a) setting up, promoting or investing in a business, venture, activity or company which entails or proposes to compete against the business of the Employer by inter alia offering same or similar Service as are offered or proposed to be offered by the Employer and/or its Affiliate.
 - (b) entering into any agreement or arrangement, with any third party which results or is likely to result in making available same or similar services as are offered or proposed to be offered by the Employer and/or its Affiliate;
 - (c) entering into any agreement with any third party for the transfer of business knowledge or information to any third party so as to offer the third party an opportunity to compete with the Service and business of the Employer by inter alia offering same or similar Service as are offered or proposed to be offered by the Employer and/or its Affiliate.

SECTION 3

CONSIDERATION

- 3.1. In consideration of the emoluments agreed to be paid to the Employee by the employer, the Employee has agreed to assume the obligations set out in this Agreement.

SECTION 4

CONFIDENTIALITY

- 4.1 The Employee hereby undertakes that he shall, and shall cause their representatives and Affiliates to, treat any information (i) related to the Employer's Business, (ii) the information ("Confidential Information") received from the Employer or from any of the Employer's Affiliates as strictly confidential and that they shall refrain from making any disclosure to anybody for whatever purpose such Confidential Information, unless such Confidential Information is in the public domain through no fault of the Employee or their representatives or of any of their Affiliates.
- 4.2. None of the Parties hereto shall disclose the contents of this Agreement to any third party without the prior consent of the other party, except to the extent of any disclosure which might be required to be made under any statutory or other applicable regulation or by the effect of a court order / administrative order.

SECTION 5

WARRANTIES

- 5.1 The Employee represents and warrants that by entering into this Agreement, the Employee is not, and shall not be deemed to be, in default or breach of any of his duties or obligations to any person.

SECTION 6

INDEMNITIES

- 6.1. The Employee shall indemnify and keep indemnified the Employer, its directors, officers, shareholders, and agents from and against and in respect of any and all losses, liabilities and/ or damages, resulting from
- (a) Any misrepresentation, breach of warranty or obligation or non-fulfillment of any obligations or covenants on the part of the Employee or its affiliates under this Agreement, and
 - (b) all actions, suits, proceedings, claims, demands, judgments, costs and expenses on a full indemnity basis, incidental to any of the foregoing or incurred in investigating or attempting to avoid contest or defer the same or enforcing any of the rights of the Employer under this Agreement.

SECTION 7

GOVERNING LAW AND ARBITRATION

- 7.1 This Agreement shall be governed by and construed in accordance with the laws of India.
- 7.2 The Parties hereto agree that they shall use all reasonable efforts to resolve between themselves any disputes, controversy or claim arising out of or relating to this Agreement in an amicable manner. In particular the Parties agree that discussions will be carried out between senior level officers of the Employer and the Employee to a maximum period of forty-five (45) days from the date that written notice of the details of the issue in dispute, controversy or claim shall have been given by one Party to the other.
- 7.3 In the event the efforts and discussions described in Clause 7.2 fail to resolve the matter, such dispute, controversy or claim shall be settled by arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996, and any statutory modification or re enactment thereof. It is further agreed that the place of arbitration shall be New Delhi and the Arbitrator shall be appointed mutually by the Parties. The decision of the arbitrator shall be final and binding upon the Parties.

SECTION 8

GENERAL

8.1. Waiver.

Waiver by any Party of any default with respect to any provision, condition or requirement hereof, any delay or omission of any Party to exercise any right hereunder on any one occasion shall not in any manner impair the exercise of any invalidity of such right on any other occasion.

8.2. Invalidity.

If any of the provisions of this Agreement become invalid, illegal or unenforceable in any respects under any applicable law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. Where the provisions of such applicable law may be waived, they are hereby waived by the Parties to the full extent permitted so that this Agreement shall be deemed to be valid and binding and enforceable in accordance with its terms. If any provision of this Agreement becomes invalid, the Parties agree to substitute for such invalid provision a new provision, which serves the purpose of the invalid provision to the extent possible.

8.3. Entire Agreement.

The parties acknowledge that this Agreement constitutes the entire agreement between the Parties in respect of the matters hereby contemplated. All previous communications, either oral or written, between the Parties hereto with respect to the subject matter hereof are hereby superseded.

8.3. Notices.

All notices require or permitted hereunder shall be in writing and in the English language and shall be sent by recognized courier or by facsimile transmission address

to the address of each Party set forth above, or to such other address as such other Party shall have communicated to the other Party. Notice shall be deemed to have been served when received (and immediately upon transmission in the case of facsimile transmission or other forms of instantaneous communication including e-mail).

8.4. Variation.

Any variation of this Agreement shall be mutually agreed in writing and executed by or on behalf of each of the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first herein above appearing.

(Company)

(Employee)

In the presence of:

Witness: 1.

Witness 2: